



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2013-0233; FRL-9825-6]

**Approval and Promulgation of Implementation Plans; State of
Kansas; Infrastructure SIP Requirements for the 1997 and 2006
Fine Particulate Matter National Ambient Air Quality Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of four Kansas State Implementation Plan (SIP) submissions. EPA is approving portions of two SIP submissions addressing the applicable infrastructure requirements of the Clean Air Act (CAA) for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM_{2.5}). These infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also taking final action to approve two additional SIP submissions from Kansas, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas, and another addressing the requirements applicable to any board or body which approves permits or enforcement orders of the CAA, both of which support

requirements associated with infrastructure SIPs. The rationale for this action is explained in this notice and in more detail in the notice of proposed rulemaking for this action, which was published on April 17, 2013.

DATES: This rule will be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established docket number EPA-R07-OAR-2013-0233 for this action. All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219;

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional information by addressing the following:

- I. Background and Purpose
- II. EPA's Response to Comment
- III. Summary of EPA Final Action
- IV. Statutory and Executive Order Review

I. Background and Purpose

On April 17, 2013, EPA proposed to approve four Kansas SIP submissions (78 FR 22827). EPA received the first submission on January 8, 2008, addressing the infrastructure SIP requirements relating to the 1997 PM_{2.5} NAAQS. EPA received the second submission on April 12, 2010, addressing the infrastructure SIP requirements relating to the 2006 PM_{2.5} NAAQS. As originally detailed in the proposed rulemaking, EPA had previously approved section 110(a)(2)(D)(i)(I) and (II) - Interstate and international transport requirements of Kansas' January 8, 2008, SIP submission for the 1997 PM_{2.5} NAAQS (72 FR 10606, May 8, 2007); and EPA disapproved section 110(a)(2)(D)(i)(I) - Interstate and international transport requirements of Kansas' April 12, 2010, SIP submission for the 2006 PM_{2.5} NAAQS (76 FR 43143, July 20, 2011). Therefore, we did not propose to act on those portions in the April 17, 2013, proposed rule since they

had already been acted upon by EPA. With this final action, we will have acted on both the January 8, 2008, and the April 10, 2010, submissions in their entirety, excluding those provisions that are not within the scope of today's rulemaking as identified in section IV of the April 17, 2013, proposed action for both the 1997 and 2006 PM_{2.5} infrastructure SIP submissions.

The third submission was received by EPA on March 1, 2013. This submission revises the Kansas rule found at Kansas Administrative Regulations (KAR) 29-19-350 "Prevention of Significant Deterioration of Air Quality" to incorporate by reference Federal rule changes through July 1, 2011. These changes implement elements of the Prevention of Significant Deterioration (PSD) regulations relating to EPA's 2008 NSR PM_{2.5} Implementation Rule (73 FR 28321, May 16, 2008) and certain elements of the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" rule (75 FR 64864, October 20, 2010). On April 2, 2013, Kansas amended and clarified its submission so that it no longer included specific provisions affected by the January 22, 2013, U.S. Court of Appeals for the District of Columbia court decision which vacated and remanded the provisions concerning implementation of the PM_{2.5} SILs and

vacated the provisions adding the PM_{2.5} SMC that were promulgated as part of the October 20, 2010, PM_{2.5} PSD Rule (*Sierra Club v. EPA*, No. 10-1413 (filed December 17, 2010)). In addition, this rule amendment defers the application of PSD permitting requirements to carbon dioxide emissions from bioenergy and other biogenic stationary sources.

The fourth submission was received by EPA on March 19, 2013. This submission addresses the conflict of interest provisions in section 128 of the CAA as it relates to element E of the infrastructure SIP. In the proposed rulemaking, EPA proposed to "parallel process" the SIP revision relating to these conflict of interest provisions. Under this procedure, EPA proposed rulemaking action concurrently with the State of Kansas' procedures for approving a SIP submission and amending its regulations. Because Kansas did not receive any comments during its public comment period and therefore the regulation revision adopted by Kansas is identical to the draft regulation which EPA described in the proposal, in today's action EPA is finalizing approval of the conflict of interest provisions.

In summary, EPA is taking final action today to approve these four SIP submissions from Kansas. The first two

submissions address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 1997 and 2006 NAAQS for PM_{2.5}. With this final action, we will have acted on both the 1997 and 2006 submissions in their entirety excluding those provisions that are not within the scope of the rulemaking. EPA is also taking final action to approve two additional SIP submissions from Kansas, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas as it relates to PM_{2.5}, unless otherwise noted in EPA's proposed action on April 17, 2013 (78 FR 22827), and another SIP revision addressing the requirements of section 128 of the CAA, both of which support the requirements associated with infrastructure SIPs.

The public comment period on EPA's proposed rule opened April 17, 2013, the date of its publication in the Federal Register, and closed on May 17, 2013. During this period, EPA received one comment from a citizen, and one from the Kansas Department of Health and Environment (KDHE). The letters are available in the docket to today's final rule. The citizen comment was in support of EPA's action, and we appreciate the support for this rulemaking. No changes were made to this final action based on this comment. Today's final action includes EPA's response to KDHE's comment.

II. EPA's Response to Comment

Comment: KDHE commented that EPA retract certain language in the proposed rulemaking for today's final action. The proposed rulemaking stated at 78 FR 22838: "As described under element C in section V of this rulemaking, states had an obligation to address condensable PM emissions as a part of the 2008 PM_{2.5} NSR implementation rule. In Kansas' March 1, 2013, SIP submission, Kansas incorporated by reference EPA's definition for regulated NSR pollutant (formerly at 40 CFR 51.166(b)(49)(vi)), including the term 'particulate matter emissions,' as inadvertently promulgated in the 2008 NSR Rule. EPA is, however, proposing to approve into the Kansas SIP the requirement that condensable PM be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ because it is more stringent than the Federal requirement. Kansas can choose to initiate further rulemaking to ensure consistency with Federal requirements." KDHE contends that its March 1, 2013, PSD SIP submission was intended to align the state's PSD rules with the Federal rules and therefore is not more stringent than Federal requirements.

Response: After evaluating KDHE's comment, EPA agrees that KDHE's March 1, 2013, submission did not include provisions that are more stringent than the Federal requirements.

III. Summary of EPA Final Action

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM_{2.5} NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the infrastructure to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 1997 and 2006 PM_{2.5} NAAQS are implemented in the state. Therefore, EPA is taking final action to approve Kansas' infrastructure SIP submissions for the 1997 and 2006 NAAQS for PM_{2.5} for the following section 110(a)(2) elements and sub-elements: (A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). In addition, EPA is approving two SIP submissions, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas as it relates to PM_{2.5}, and another SIP revision addressing the requirements of section 128 of the CAA, both of which support the requirements associated with infrastructure SIPs.

IV. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will

submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**FEDERAL REGISTER** OFFICE: INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2013.

Mark Hague,
Acting Regional Administrator,
Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R - Kansas

2. In § 52.870:

a. The table in paragraph (c) is amended by revising the entry for 28-19-350.

b. The table in paragraph (e) is amended by adding new entries (34), (35), and (36) in numerical order at the end of the table.

The revisions and additions read as follows:

§ 52.870 Identification of plan.

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(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
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Kansas Department of Health and Environment Ambient Air Quality Standards and
Air Pollution Control

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Construction Permits and Approvals

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28-19-350	Prevention of Significant Deteriorati on (PSD) of Air Quality	12/28/2012	[<u>INSERT</u> <u>DATE OF</u> <u>Federal</u> <u>Register</u> <u>PUBLICATIO</u> <u>N]</u> [<u>INSERT</u> <u>Federal</u> <u>Register</u> <u>PAGE</u> <u>NUMBER</u> <u>WHERE THE</u> <u>DOCUMENT</u> <u>BEGINS]</u>	Provisions of the 2010 PM _{2.5} PSD - Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved. Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved. In addition, we have not approved Kansas rule incorporating EPA's 2007 revision of the definition of "chemical processing plants" (the "Ethanol Rule," 72 FR 24060 (May 1, 2007) or EPA's 2008 "fugitive emissions rule," 73 FR 77882 (December 19, 2008).
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EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic area or nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(34) Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS	Statewide	1/08/2008	[<u>INSERT DATE OF PUBLICATION IN Federal Register</u>] [<u>INSERT CITATION OF PUBLICATION</u>]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except as noted.
(35) Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS	Statewide	4/12/2010	[<u>INSERT DATE OF PUBLICATION IN Federal Register</u>] [<u>INSERT CITATION OF PUBLICATION</u>]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except as noted.
(36) Section 128 Declaration: Kansas Department of Health and Environment Representation and Conflicts of Interest Provisions, Kansas Revised Statutes (KSA). KSA 46-221, KSA 46-229, KSA 46-247(c)	Statewide	3/19/2013	[<u>INSERT DATE OF PUBLICATION IN Federal Register</u>] [<u>INSERT CITATION OF PUBLICATION</u>]	

[FR Doc. 2013-14627 Filed 06/19/2013 at 8:45 am; Publication Date: 06/20/2013]